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**Comments re: Docket RSPA-03-15327 (HM-206B) NPRM Hazardous Materials: Changes to the Hazard Communication Requirements, Including Revision of Design of Labels and Placards for Materials Poisonous by Inhalation.**

The Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA) submits the following comments for your consideration regarding the subject docket. COSTHA is a non-profit organization representing manufacturers, shippers, distributors, carriers, freight forwarders, trainers, packaging manufacturers and others associated with the hazardous materials transportation industry. These entities are involved in all aspects of hazardous materials commerce, including transportation of hazardous materials, hazardous substances, marine pollutants, and hazardous wastes. COSTHA members represent greater than \$140 billion in commerce. In addition to promoting regulatory compliance and safety in hazardous materials transportation, COSTHA assists its members and the public in evaluating the practicality and efficacy of laws, rules and regulations for the safe transportation and distribution of hazardous materials.

COSTHA understands the needs of the emergency responder to have as much information as possible to make a safe entry to a hazardous material incident scene. Liquefied propane gas without an odorization agent added, such as Methyl Mercaptan, would present an undetectable hazard in the event of release and creates an unacceptable risk. Therefore it makes good sense to communicate the hazard by means of a marking on the packaging. However, the only person who knows whether or not the liquefied gas is odorless or has been odorized is the person who fills the packaging, as the proper shipping name and the UN identification number are identical. Therefore it also would make sense to require that person to make an entry on the shipping paper to declare "NON-ODORIZED" and we recommend that §172.203 be amended to require such an entry. The carrier could then check for compliance with the marking requirement when the shipper offers such cargo.

Regarding the proposal to require the display of the UN identification number on a transport vehicle or freight container containing any quantity of an organic peroxide, temperature controlled, that is required to be placarded in accordance with the requirements in §172.504(e), Table 1, we believe the proposal would have a limited benefit to safety and would result in significant confusion, particularly in international commerce. Please consider that when the marking requirements of 49 CFR stray from the meaning of those same markings displayed according to international codes, the communication may actually be thwarted. The display of the identification number for a Class 5.2 transported under international codes would indicate the presence of a bulk packaging or a shipment of 4000 kg or more loaded at one location with no other hazardous materials in the container or transport unit. Seeing the ID number displayed as proposed might lead to an erroneous conclusion and an improper response. And, assuming that imported cargo would not be subject to this proposed rule since it is currently not required under the UN Model Regulations or the International Maritime Dangerous Goods Code and would not foster harmonization, if the imported container with organic peroxide temperature controlled cargo did not display the UN identification number and merely displayed a Class 5.2 placard, the emergency responder might again be drawn into the erroneous conclusion that the 5.2 substance was not temperature controlled. We would also suggest that an emergency responder responding to an incident involving a class 5.2 placard would always assume that the cargo should be protected from a rise in temperature since virtually all organic peroxides may undergo exothermal release of oxygen or instability and many are flammable.

We commend the US DOT for correcting an error in the specifications for the PIH placards and would suggest that the manufacture of all placards after a transitional period should be manufactured to the corrected specification. The transitional period should provide a reasonable time for placard manufacturers to use existing stocks of placards and to change their printing process to the amended design and to then mandate that these placards be manufactured only to the amended specification. However, we feel there is no significant benefit to safety that will result from the proposed change since emergency responders have been trained that the black geometric image at the top of the placard indicates an inhalation hazard. The size of that geometric shape is not critical to communicating the hazard. We agree with the proposal for authorizing continued use of “flip-type” placards and permanently marked and labeled packagings for their useful life. The proposal to provide different transition dates for persons who had purchased and used the old style placards prior to October 1, 2001, or for different transitions dates for tag board placards versus vinyl adhesive placards is overly complex and difficult to understand and could result in enforcement problems when ascertaining when a person first began to use and maintain their supply of the existing placards. Therefore we suggest that existing placards be authorized for use indefinitely until current supplies are exhausted. To require otherwise would unnecessarily burden the regulated community. Available resources might better be spent on enhancing safety and security in a more meaningful way.

But, regardless of the size of the upper black diamond we do not believe that the symbol should overlap and impinge on the rectangular space specified for the display of the four digit identification number since it could cause in errors in reading the numbers from a distance and result in an improper response. The proposed language at §172.332(c)(5) “provided the identification number is legible and visible” lacks specificity and could be construed differently by individual observers. The provisions of §172.332(c)(5) should authorize only that the lower

point of the black square-on-point may be clipped off so as not to impinge on rectangle displaying the ID number marking.

In regards to the proposed changes to the fumigation marking and ventilation requirements, COSTHA suggests that the text of 49 CFR reflect the text of the current UN Model Regulations and the IMDG Code to enhance international harmonization.

We support the proposal to amend §172.402(h) and adopt the exception for the Class 3 subsidiary label for an organic peroxide since it reflects the UN Model Regulations exception.

COSTHA would also like to point out an inconsistency regarding the addition of the text at §172.504(f) to include “A class 9 placard is not required for domestic transportation including that portion of international transportation defined in §171.8 of this subchapter, which occurs within the United States.” The inconsistency results from the text at §171.12(b) which states “Notwithstanding the provisions of this subchapter, a material which is packaged, marked, classed, labeled, placarded, described, stowed and segregated, and certified in accordance with the IMDG Code and otherwise conforms to the requirements of this section, may be offered and accepted for transportation and transported within the United States.” If a shipper packs a container for export by vessel and complies with the IMDG Code and further follows the conditions and limitations at §171.12 there is a reasonable assurance that the container will be transported and reach the sea port terminal in a compliant condition for vessel transport. Of course that shipper must ensure that each of the elements of the IMDG Code stated at §171.12(b) have been complied with. The proposed amendment to §172.504 would not prevent the intermodal carrier from removing the Class 9 placards and thus placing the container in non-compliance when it arrives at the port. Since the vessel operator could not accept the container for loading without the class 9 placards displayed, the liability and expense for placarding now comes into question. And, during the domestic portion of the move, is the container in compliance with the IMDG Code as required by §171.12(b)? While we support the exception for domestic only shipments we feel the exception as extended to international shipments in cargo transport units will result in confusion and non-compliance. Further, placards are the often the obvious clue to otherwise non-declared hazardous material cargo.

We appreciate the opportunity to comment on the proposed rulemaking and please contact us if additional clarification is required.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Curran", is written over a horizontal line.

COSTHA Administrator